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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,188	08/21/2000	Jesse Darley	P0663/7024	8696

7590 03/25/2004

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EXAMINER

VO, HIEN XUAN

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/643,188

Applicant(s)

DARLEY ET AL.

Examiner

Hien X. Vo

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-62 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-11 is/are rejected.
- 7) ☐ Claim(s) 5-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Notice to Applicant(s)***

This application has been examined. Claims 1-62 are pending.

The prior art submitted on 04/09/2001, 03/15/2002, 01/08/2003 and 03/06/2003 has been considered as indicated on the enclosed copies of Form PTO-1449.

***Drawings***

1. The drawings were received on 10/24/02. These drawings are accepted.

***Specification***

On page 1 of the specification, applicant is required to update the current status of the parent applications serial No. 09/547,975, 09/547,976, 09/547,977 and 09/548,217. Correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4, 9-11 are rejected under 35 U.S.C. **102(e)** as being anticipated by Richardson et al. (U.S. Patent No.6,135,951).

With respect to claim 1, Richardson et al. disclose a portable aerobic fitness monitor for walking and running that include identifying an average foot contact time of a user during a first outing; identifying an average pace of the user during the first outing (see e.g. col. 27, table 2, #214), defining a relationship between foot contact times of the user and corresponding paces of the user, wherein the relationship is based upon the average foot contact time and the average pace identified during the first outing, and wherein no other average foot contact times and no other average paces identified during any different outings by the user are used to define the relationship (see e.g. cols.25-26, table 1); and calibrating at least one device that monitors activity of the user in locomotion on foot based upon the defined relationship between foot contact times of the user and corresponding paces of the user (see e.g. col. 34, lines 17-20) .

With respect to claims 2-4, Richardson et al. disclose the invention as claimed including determining at least one foot contact time of the user during a second outing

Art Unit: 2863

(see e.g. Fig.1, 007), and calculating a pace of the user during the second outing by including the determined at least one foot contact time in an equation defining the relationship between foot contact times of the user and corresponding paces of the user (see e.g. Fig. 1, 009 and col. 4, lines 35-40), calculating a distance traveled by the user during the second outing based upon the determined plurality of foot contact times and the relationship between foot contact times of the user and corresponding paces of the user (see e.g. Abstract), determining a plurality of foot contact times during the first outing (see e.g. col. 4, lines 30-32), calculating the average foot contact time of the user during the first outing based upon the plurality of determined foot contact times (see e.g. col.6, lines 21-25); determining an amount of time that elapsed during the first outing (see e.g. table 2), calculating the average pace of the user during the first outing based upon the amount of time that elapsed during the outing and the distance traveled during the outing (see e.g. table 1), identifying a single user-specific calibration constant that defines the relationship between foot contact times of the user and corresponding paces of the user (see e.g. col. 1, lines 25-30).

With respect to claims 9-11, Richardson et al. disclose the invention as claimed including determine a single user-specific calibration constant that defines a relationship between foot contact times of a user and corresponding paces of the user, wherein no other user-specific calibration constants are used to define the relationship (see e.g. Figs.13a-b, col.7, lines 44-57 and col. 8, lines 2-10), calibrating at least one device that monitors activity of the user in locomotion on foot based upon the relationship between foot contact times of the user and corresponding paces of the user that is defined by the

Art Unit: 2863

single user-specific calibration constant (see e.g. col.8, lines 23-39), determining at least one foot contact time of the user during an outing (see e.g. abstract); calculating a pace of the user during the outing by including the determined at least one foot contact time in an equation defining the relationship between foot contact times of the user and corresponding paces of the user (see e.g. col. 30).

***Allowable Subject Matter***

Claims 5-8 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12-62 allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien X. Vo whose telephone number is (571) 272-2282. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

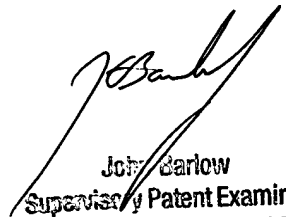
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 09/643,188  
Art Unit: 2863

Page 5

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hien Vo  
March 16, 2004



John Barlow  
Supervisory Patent Examiner  
Technology Center 2800